

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,)

ORDER

Now pending before the Court is defendant's Motion to Dismiss or Strike Indictment.

Defendant argues that the additional sentencing allegations are not properly included in the indictment and that the additional sentencing allegations should be stricken or the indictment should be dismissed. United States Magistrate Judge James C. England issued his Report and Recommendation on May 4, 2005.

Upon careful and independent review of the pending motion, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge James C. England.

Accordingly, it is hereby ORDERED that Defendant's Motion to Dismiss or Strike Indictment is granted in part. The additional sentencing allegations are to be stricken as surplusage.

SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: May 23, 2005